IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15298 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABHAYKUMAR P JAIN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15298 of 2004

MR KIRAN R JANI for Petitioner No. 1

MR PRADIP BHATE, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 22/02/2005

CAV JUDGEMENT

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the

legality and validity of the order dated 22.7.2004 passed by the Secretary, Food and Civil Supplies Department, State of Gujarat in Revision Application No.49 of 2003 in dismissing the same and confirming the order passed by the Collector and District Magistrate, Ahmedabad dated 24.10.2003 in Appeal No.13 of 2003 and also the order dated 3.10.2003 passed by the District Supply Officer, Ahmedabad in cancelling the licence and/or authorisation of the petitioner to run the fair price shop.

#. The petitioner was having licence / authorisation to run fair price shop under the provisions of the Gujarat Essential Articles (Licencing Control and Stock Declaration) Order, 1981. That Inspecting Officer had carried out the inspection at the fair price shop of the petitioner on 8.4.2003, 29.7.2003 and 30.7.2003 and during the course of inspection, following seven irregularities were alleged to have been found.:

"(1) In respect of 32 card holders kerosene involved 384 liters.

(2) Card No.G.10749, a bill was made two times on 13/3/03 and on 16/3/03 total kerosene involved 27 liters.

(3) Not maintaining kerosene register.

(4) 52 card holders possessing DBC and kerosene involved 1624 liters.

(5) Total 176 card holders are not found residing at their addresses on comparison with G-Register, kerosene involved 5100 litres.

(6) 17 card holders are either transferred to other shop or are cancelled. Total 228 liters of kerosene involved.

(7) 13 card holders, cards have been replaced by inserting new bogus page."

On the basis of the aforesaid inspection, the show cause notices came to be issued by respondent No.3 - District Supply Officer, Ahmedabad dated 3.7.2003 and 2.9.2003 to show cause as to why the licence and/or authorisation should not be cancelled and the deposit of the licence should not be forfeited. The petitioner submitted his reply dated 14.7.2003 and 25.9.2003 and denied all the allegations made against him. The respondent No.3 by his order dated 3.10.2003 cancelled the licence and

authorisation to run the fair price shop after forfeiting the deposit amount of licence and authorisation. Being aggrieved and dissatisfied with the order passed by the District Supply Officer, Ahmedabad dated 3.10.2003, the petitioner preferred the appeal before the Collector and District Magistrate, Ahmedabad being Appeal No.13 of 2003 and the Collector, Ahmedabad by his order dated 24.10.2003 confirmed the order dated 3.10.2003 and dismissed the appeal preferred by the petitioner. Being aggrieved and dissatisfied with the order passed by the Collector, Ahmedabad dated 24.10.2003 in Appeal No.13 of 2003, the petitioner preferred the revision application before the State Government, being Revision Application No.49 of 2003 and by order dated 22.7.2004, the revisional authority also dismissed the said revision application confirming the orders passed by both the authorities below in cancelling the licence and authorisation to run the fair price shop. Being aggrieved and dissatisfied with the orders passed by all three authorities below in cancelling the licence and authorisation to run the fair price shop and forfeiting the deposit amount, the petitioner preferred the petition under Article 226/227 of the Constitution of India.

#. Mr.K.R.Jani, learned advocate appearing for the petitioner, has mainly submitted that the order passed by the District Supply Officer was in breach of the principles of natural justice inasmuch as the documents which are relied upon by the authority in holding the charge against the petitioner while cancelling the licence and authorisation to run the fair price shop were not supplied, and, therefore, the order passed by the District Supply Officer was in breach of the principles of natural justice. It is submitted by Mr.Jani that in spite of the fact that submissions were made before the Collector as well as the revisional authority with regard to non-supply of the documents, the same have not been dealt with by the appellate authority as well as revisional authority and had confirmed the order passed by respondent No.3, i.e. District Supply Officer which is required to be quashed and set aside. Number of submissions on merits were also made on behalf of the petitioner by contending, inter alia, that the order passed by the District Supply Officer proving the charge against the petitioner is also contrary to the evidence on record.

#. Mr.Bhate, learned AGP, appears on behalf of the respondents. Affidavit-in-reply is filed on behalf of the respondents. It is submitted that it was noticed that 1293 ration card holders were registered with the

petitioner, out of which 753 were not having gas connection and other card holders were found having gas connection even though kerosene was supplied to them. It is submitted that total 32 card holders were examined and it was found that they did not receive kerosene from the petitioner though they are having gas connection on their names and false bills were issued by the petitioner and about 384 liters kerosene was sold out to others. It is submitted that considering the evidence on record, all the charges levelled against the petitioner are proved, and, therefore, it was found that the petitioner has violated the conditions of licence as well as Gujarat Essential Articles (Licencing Control and Stock Declaration) Order, 1981, and, therefore, licence and authorisation to run the fair price shop is rightly cancelled. It is further submitted that, in fact, the petitioner was detained under the provisions of the Prevention of Black Marketing Act on 12.7.2004 and the order came to be passed against the petitioner under the aforesaid Act which came to be set aside by this Court on 30.10.2004. However, it is submitted that the petitioner was supplied all the documents which are relied upon by respondent NO.3 along with the grounds of detention at the time when the petitioner was detained under the provisions of the Prevention of Black Marketing Act, and, therefore, it is submitted that it is not correct that though demanded, the petitioner was not supplied the documents and the material which was relied upon by respondent NO.3 while passing the impugned order dated 3.10.2003. Therefore, it is submitted that, the allegation and the contention on behalf of the petitioner with regard to non-supply of the documents though demanded, and, therefore, the order passed by respondent No.3 is in breach of the principles of natural justice is denied, and, therefore, requested to dismiss the present petition considering the allegations and charges proved against the petitioner.

#. Heard the learned advocates for the parties.

#. The show cause notices came to be issued upon the petitioner on 3.7.2003 and 2.9.2003 and in reply to the said show cause notices, the petitioner submitted his detailed reply and while submitting the reply to the show cause notice dated 2.9.2003 on 25.9.2003 there was specific demand by the petitioner to give him copies of the statements to be relied upon by respondent No.3 to the charges levelled against the petitioner and in spite of the aforesaid specific demand, the documents and the statements which are to be relied upon by respondent No.3 were not supplied and the impugned order came to be

passed on 3.10.2003 cancelling the licence and authorisation to run the fair price shop relying upon the documents and statements of the ration card holders. Before the appellate authority as well as the revisional authority, the petitioner also made grievance with regard to non-supply of necessary documents / statements which are relied upon by respondent No.3 while passing the impugned order dated 3.10.2003, still the appellate authority as well as the revisional authority confirmed the order passed by respondent No.3 on the ground that there is no specific demand by the petitioner in reply dated 14.7.2003.

#. It is required to be noted that the petitioner was served with two show cause notices, one dated 3.7.2003 and another dated 2.9.2003. In response to the show cause notice dated 2.9.2003, the petitioner filed his reply on 25.9.2003 in which there is a specific demand with regard to the documents and the statements to be relied upon by respondent No.3. At this stage, it is required to be noted that Mr.Bhate, learned AGP, has submitted that the petitioner, even otherwise, is supplied all necessary documents and the statements which are relied upon by respondent No.3 while passing the order dated 3.10.2003 along with the grounds of detention when the petitioner came to be detained / arrested on 12.7.2004, and, therefore, it is submitted that the impugned order passed by respondent No.3 is not in breach of the principles of natural justice. It is also required to be noted that the impugned order came to be passed by respondent No.3, which came to be confirmed by the appellate authority as well as revisional authority, on 3.10.2003 and the documents came to be supplied along with the grounds of detention on 12.7.2004, i.e. much after the order came to be passed by respondent No.3 cancelling the licence and authorisation to run the fair price shop. As held by the Honourable Supreme Court as well as this Court in catena of judgments, if the documents / statements which are relied upon by the authority while passing the order against the person are not supplied to the person and the person is not given opportunity to meet with the same, any action taken on relying upon the said statements / documents is illegal and is in breach of the principles of natural justice.

#. Considering the facts and circumstances of the case, more particularly, in spite of the specific demand by the petitioner for supplying the documents / statements of the ration card holders which were to be relied upon by respondent No.3 and that the same were not supplied and the order came to be passed on 3.10.2003 and, therefore,

the impugned order dated 3.10.2003 is in breach of the principles of natural justice which requires to be quashed and set aside only on that ground without going into the merits of the case. Accordingly, the orders passed by the appellate authority as well as revisional authority confirming the order passed by respondent No.3 dated 3.10.2003 are also required to be quashed and set aside. However, in view of the fact that the petitioner is now already having all necessary documents / statements which were relied upon by respondent No.3 while passing the impugned order dated 3.10.2003 along with the grounds of detention when the petitioner was detained under the provisions of the Prevention of Black Marketing Act in the month of July 2004, and, therefore, now the petitioner is not required to be supplied and given any further document which is also agreed upon by the petitioner. It is also agreed by the learned advocate for the petitioner that till the appropriate decision is taken by respondent No.3 on remand though the impugned orders might be quashed and set aside, the petitioner may not be permitted to run the fair price shop.

#. For the reasons stated above, this petition is partly allowed. The order passed by respondent No.3 dated 3.10.2003 cancelling the licence and authorisation to run the fair price shop, the order passed by the District Collector, Ahmedabad dated 24.10.2003 in Appeal No.13 of 2003 as well as the order passed by the State Government - revisional authority dated 22.7.2004 in Revision Application No.49 of 2003 are hereby quashed and set aside and the matter is remanded to respondent No.3 for passing the appropriate order on its own merits and in accordance with law after giving opportunity to the petitioner. It is made clear that, this Court has quashed and set aside the order passed by respondent No.3 dated 3.10.2003 only on the ground that the same is in breach of the principles of natural justice and this Court has not expressed any opinion on merits in favour of the petitioner with regard to the allegation against the petitioner of alleged irregularity by the petitioner. It is also made clear that on the basis of the concession given by the learned advocate for the petitioner, though the impugned order passed by respondent No.3 dated 3.10.2003 is quashed and set aside, the petitioner will not be permitted to run the fair price shop and the same is suspended till the appropriate decision is taken by respondent No.3 on remand.

Rule is made absolute with no order as to costs.

(M.R.Shah,J)

(pathan)